

1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF SOUTH DAKOTA  
 3 NORTHERN DIVISION  
 4 SIOUX RURAL WATER SYSTEM, INC., a  
 5 Non-Profit Corporation,  
 6 Plaintiff, Civil No.  
 7 vs. 15-1023  
 8 CITY OF WATERTOWN, a South Dakota  
 9 Municipality, and WATERTOWN  
 10 MUNICIPAL UTILITIES, an agency of  
 11 the CITY OF WATERTOWN,  
 12 Defendants.

## DEPOSITION OF STEVEN BURIAN

19 DATE: Tuesday, September 20, 2016  
 20 PLACE: AF2S, Inc.  
 21 4170 South 28th Avenue  
 22 Fargo, North Dakota  
 23 TIME: 1:51 p.m.  
 24 REPORTED BY: Deanna L. Sager, R.P.R., R.M.R.  
 25

C O N T E N T S		
W I T N E S S E S		
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STEVEN BURIAN	Examination by Mr. Cole	4
E X H I B I T S		
EXHIBIT NO.	DESCRIPTION	MARKED
6	Technical Memorandum from Steve Burian, PE and Richard Wagner, PE 8/12/2016	4

1

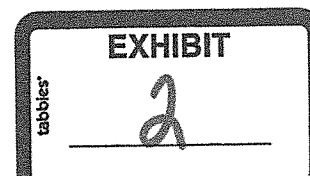
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1 A P P E A R A N C E S  
 2  
 3 FOR THE PLAINTIFF:  
 4 Zimmer, Duncan and Cole, L.L.P.  
 5 Attorneys at Law  
 6 5000 South Broadband Lane  
 7 Suite 119  
 8 Sioux Falls, South Dakota 57108  
 9 By: Jeff Cole  
 10 jcole@zdcclaw.com  
 11  
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 14 Attorneys at Law  
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 17 Aberdeen, South Dakota 57402  
 18 By: Jack H. Hieb  
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 20 jstucke@rwsh.com  
 21  
 22  
 23  
 24  
 25

1 P R O C E E D I N G S  
 2 (Whereupon, the deposition of STEVEN  
 3 BURIAN commenced at 1:51 p.m. as follows:)  
 4 (Whereupon, Deposition Exhibit No.  
 5 6 was marked for identification by  
 6 the court reporter.)  
 7 STEVEN BURIAN,  
 8 HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH,  
 9 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, RELATIVE  
 10 TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:  
 11 EXAMINATION  
 12 BY MR. COLE:  
 13 Q. Could you please state your name?  
 14 A. Steve Burian.  
 15 Q. Have you ever had your deposition taken  
 16 before?  
 17 A. No.  
 18 Q. Is it okay today if I refer to you as  
 19 Steve?  
 20 A. Sure.  
 21 Q. Steve, if I ask you a question that you  
 22 don't understand, I want you to tell me that.  
 23 Otherwise I'm going to assume that you understood the  
 24 question. Is that agreeable to you?  
 25 A. Yes.  
 26 Q. And I'll try not to speak over you and  
 27 you try not to speak over me so we have a clear

2

4



1 either, are they?

2 A. Not that I'm aware of.

3 Q. Okay. And these are recommended  
4 standards, as I understand it, from just looking at  
5 the cover?

6 A. Yes.

7 Q. Are you aware of any ruling by any  
8 South Dakota regulatory agency that states that the  
9 10 States Standards are the standard that's to be  
10 used in the construction of facilities in the state  
11 of South Dakota?

12 A. No.

13 Q. Are you aware of any regulatory  
14 decision by any governmental entity in the state of  
15 South Dakota that how Sioux Rural Water provides  
16 water is insufficient in any way under South Dakota  
17 law?

18 A. No.

19 Q. Did you make notes that -- well, strike  
20 that. Let me back up a minute.

21 You did note in your report some areas  
22 that you believe that Sioux does not meet the  
23 10 States Standards; correct?

24 A. Yes.

25 Q. And that was what you put into your

25

1 understand it.

2 A. Yes.

3 Q. Go ahead if you want to.

4 A. For instance, on the treatment plant,  
5 though, when we looked at that, that large part of  
6 the treatment plant capacity was based on DGR's  
7 assessment of the treatment plant, and 10 States  
8 standards were referenced in that case, but it  
9 was -- the information that we received from DGR was  
10 probably more influential in drawing those opinions  
11 than 10 States Standards were.

12 Q. Let me ask you, do any of your rural  
13 water customers provide fire protection?

14 A. Not directly.

15 Q. And I understand if they provide water  
16 to a municipality that municipality may provide water  
17 protection.

18 A. That wasn't my point in saying not  
19 directly.

20 Q. What was your point? I didn't mean to  
21 put words in your mouth.

22 A. We have some rural water districts in  
23 North Dakota that have become heavily urbanized and  
24 they've developed cooperative agreements with their  
25 adjacent municipalities. And so they may own the

27

1 opinion in this case.

2 A. That was a part of our opinion. We  
3 also had the benefit of the DGR analysis which that  
4 was really the first thing we started with was DGR's  
5 work. And many of the solutions that DGR drew, in  
6 terms of capacity of different elements, were  
7 utilized as part of the assessment in addition to the  
8 10 States Standards.

9 Q. Okay. But as I looked at the  
10 conclusions in your report and throughout your  
11 report, you noted that there were insufficient  
12 capacities in several areas. True?

13 A. Yes.

14 Q. And those were based upon failure to  
15 meet the 10 States Standards.

16 A. In most cases they were.

17 Q. Did you make notes of what particular  
18 section of the 10 States Standards that you found in  
19 your report Sioux did not meet?

20 A. I did not. Richard would have to help  
21 with that.

22 Q. So I guess I just looked at it, and  
23 there are various sections in these recommended  
24 standards for water works. And he would have the  
25 specific section that Sioux fell short on as I

26

1 asset and provide fire protection through that asset,  
2 but it's all been designed to municipal standards and  
3 the system is actually operated by the municipality  
4 and the fire protection is provided by the  
5 municipality. And Cass Rural Water would be a prime  
6 example of that.

7 Q. That's the county surrounding the Fargo  
8 area?

9 A. Yes.

10 Q. The typical rural water system does not  
11 provide fire protection; is that fair to say?

12 A. Yes.

13 Q. And as part of your work with rural  
14 water systems, typically you don't include design  
15 that includes fire protection; is that correct?

16 A. No. Unless we were asked to provide  
17 that capacity.

18 Q. Okay. And one of the things I noted in  
19 your opinion, you talk about the inability to provide  
20 fire protection by Sioux.

21 MR. HIEB: Can you reference where in  
22 the opinion?

23 Q. Well, I'm talking about page 13. You  
24 say fire flow demands in Table 7?

25 A. What page are you on, Jeff?

28

1 Q. Page 13.

2 A. I heard 7. So the reason that we  
3 looked at that was because these systems are  
4 currently afforded fire protection. That was the  
5 reason that we looked at that.

6 Q. Explain your answer. I don't  
7 understand it.

8 A. All of these users that are  
9 current -- that we currently looked at in the west  
10 side that are served by Watertown and served by the  
11 east side currently, are served with fire protection.

12 Q. Okay. But you know that rural waters  
13 are not required to provide fire protection; correct?

14 MR. HIEB: Object to the form of the  
15 question. It calls for a legal conclusion, but go  
16 ahead.

17 A. I guess we didn't really look at the  
18 capacity from that perspective. We looked at it from  
19 the standpoint that this system was receiving a  
20 domestic service -- these users were receiving  
21 domestic service and they were currently serving fire  
22 protection. We were very careful to bifurcate our  
23 analysis so as to not overlap those two things. So  
24 in the memorandum that we developed we drew  
25 conclusions on the domestic side. But then, because

29

1 A. I can see a point that if we were more  
2 thorough that would have been something we could have  
3 added. Or could add.

4 Q. Do you know what has been amended or  
5 changed in the 10 States Standards from 1962 until  
6 2012?

7 A. I don't.

8 Q. Is it fair to say that a system, a  
9 water system, that met 10 States Standards in 1987,  
10 I'm just picking that as a year, might not meet those  
11 standards today?

12 A. It's possible I would think.

13 Q. You didn't do any analysis to determine  
14 that in this case in coming to your opinions.

15 A. Not at this point.

16 Q. Now the 10 States Standards are not  
17 applied retroactively, are they?

18 A. Explain.

19 Q. Well, if you get a 2012 10 State  
20 standard -- and I understand, just incidentally, that  
21 they amend them about every five years so we should  
22 be coming up on a new one here, but if you have a  
23 2012 edition of the 10 States Standards, you don't  
24 use those 2012 standards to go back and judge  
25 something that was done in 1987 under the standards

31

1 they were currently receiving fire flow, we drew  
2 separate conclusions on the fire flow without judging  
3 who was supposed to be providing that.

4 Q. Okay. If Watertown provides the fire  
5 flow as they are now, there's sufficient fire  
6 protection for those customers; true?

7 A. Assuming the current service is  
8 adequate, yeah.

9 Q. Now these 10 States Standards, just  
10 from what I read, looks like they've been amended  
11 many times. They were first published in 1962 and  
12 amended in 1968, 1976, 1982, 1987, 1992, 1997, 2003,  
13 2007, and 2012. Does that sound right?

14 A. Yes.

15 Q. Which -- in coming to your opinions  
16 here in the 10 States Standards, which ones of those  
17 did you use in coming to your opinion?

18 A. I don't know.

19 Q. Did you use the most current 2012  
20 10 States Standard?

21 A. I don't know.

22 Q. Would it be important to note that in  
23 your report?

24 MR. HIEB: Objection. Argumentative,  
25 but go ahead, answer.

30

1 in place at that time, do you?

2 A. I don't mean to pause, but it depends  
3 on what we were asked to do. If we were asked to  
4 look at the adequacy of that system in terms of  
5 regulatory compliance versus looking at the adequacy  
6 in current situation, if they were going to move  
7 forward we would probably use the current standard  
8 because that was the current industry practice. If  
9 somebody asked us to say was this okay in 1987, then  
10 I would likely go back to the one that was available  
11 at the time.

12 Q. Watertown never asked you to do that in  
13 this case, did they?

14 A. Not to that level of specificity.

15 Q. You were asked to use the most current  
16 2012 standard.

17 A. We weren't asked to use any standard.  
18 We were asked to use our judgment in terms of what  
19 the most widely accepted standards were to judge  
20 capacity so that all of our analysis would be  
21 objective and defensible.

22 Q. Are the 2012 edition standards the most  
23 widely accepted ones today?

24 A. That I'm professionally aware of.

25 Q. And so were the 2012 standards the one

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1 A. If you operate at 400 gallons per  
2 minute for either 20 or 24 hours of operation, you  
3 don't get 600,000 gallons per day in either  
4 situation.

5 Q. Do you have any facts that suggest  
6 because of this deficiency that Sioux hasn't been  
7 able to serve any of its existing customers?

8 A. I don't.

9 Q. Then you've got 450 gallons per minute  
10 capacity appears deficient; exceeds filter loading  
11 rate of 400 gallons per minute. Do you see that?

12 A. I do.

13 Q. Explain what that means.

14 A. So at the smaller time frame there  
15 wasn't enough capacity. At the larger time frame you  
16 would have enough hydraulic water, but it was stated  
17 in the DGR report that that exceeds the design  
18 standard because of manganese breakthrough.

19 Q. And as I understand it, you've noted  
20 this in your report, manganese breakthrough is a  
21 cosmetic issue, it's not a safe drinking water issue.

22 A. Correct.

23 Q. Do you know of any facts to suggest  
24 that because of this shortcoming that you've  
25 identified that Sioux has not been able to serve any

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1 Q. Do you agree with that?

2 A. Yes.

3 Q. Then on the west side we've already  
4 talked about this where capacity appears deficient.  
5 Are you willing to at least concede that your  
6 analysis might be incorrect now that this  
7 improvement's been made?

8 A. I don't know.

9 Q. Okay. And then on the east side you  
10 just say you don't know.

11 A. That's not exactly what we said. We  
12 said that there appears to be unique users that we  
13 would need to complete additional modeling to draw  
14 that conclusion. Or somebody would need to do  
15 further modeling.

16 Q. Is that the modeling that you've talked  
17 about before?

18 A. Yes.

19 Q. I'm just reading it, and it says,  
20 "Acceptability of capacity is unknown." That's your  
21 opinion.

22 A. Because we weren't asked to replicate  
23 the modeling, we were asked to interpret the adequacy  
24 of the modeling, we felt the modeling on the west  
25 side was adequate and drew conclusions that we

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1 of its customers?

2 A. I do not.

3 Q. Were you ever asked to determine  
4 whether Sioux couldn't serve its current customers  
5 based upon these deficiencies?

6 A. These deficiencies meaning the  
7 treatment plant? Or the entire analysis.

8 Q. The entire analysis where you say  
9 capacity appears deficient.

10 MR. HIEB: Object to the form of the  
11 question. I believe it's vague. I don't know what  
12 you mean by unable to serve their customers. That  
13 was the analysis we asked them to perform. Are you  
14 talking about whether a customer complained that they  
15 had bad water or not enough water?

16 Q. Did you understand the question?

17 A. I didn't.

18 Q. Okay. Do you have any facts that  
19 suggest that because of these deficiencies Sioux's  
20 customers didn't get water?

21 A. I don't.

22 Q. Finished water storage capacity appears  
23 adequate.

24 MR. HIEB: That's a question?

25 A. A question?

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1 thought made sense. In this case, because the user  
2 base was sufficiently different than what the typical  
3 domestic customers are, we felt it would warrant  
4 putting real user data in there in order to draw that  
5 conclusion.

6 Q. Have you done that?

7 A. As I pointed out earlier, we weren't  
8 asked to actually replicate the modeling so somebody  
9 would have to do that work.

10 Q. Fair enough. But --

11 A. But no.

12 Q. Getting at a simple point is, at this  
13 point whether the capacity is acceptable or not is  
14 unknown according to your opinion.

15 A. Yes.

16 Q. And did anyone tell you not to take  
17 into account the improvements made on the west side  
18 in coming to your analysis?

19 A. No.

20 Q. Is part of your opinion here in Table 7  
21 including a requirement that Sioux provide fire flow  
22 to both of those -- both the west side and the east  
23 side?

24 A. Are we suggesting that that's  
25 mandatory? Is that your question?

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1 MR. COLE: No. Could you read the  
2 question back, please?  
3 MR. HIEB: Well, he just told you he  
4 didn't understand the question so what would reading  
5 it back be?  
6 MR. COLE: Go ahead and read it back,  
7 please.  
8 THE COURT REPORTER: "Is part of your  
9 opinion here in Table 7 including a requirement that  
10 Sioux provide fire flow to both of those -- both the  
11 west side and the east side?"  
12 A. We weren't responsible for determining  
13 the requirements.  
14 Q. (Mr. Cole continuing) I guess what I'm  
15 asking is, and I'll concede maybe the question wasn't  
16 clear, but in coming to your opinion as stated in  
17 Table 7, was fire flow and the ability to provide  
18 fire flow part of the analysis?  
19 A. Part of our analysis?  
20 Q. Yes.  
21 A. Yes.  
22 Q. In terms of the capacity to serve, was  
23 fire flow part of your analysis?  
24 A. It was done independently from both a  
25 domestic perspective and a fire flow perspective.

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1 A. I don't recall the specifics. It was  
2 84 pages.  
3 Q. You're aware generally, aren't you,  
4 that Darin Schriever had given the opinion that with  
5 these improvements Sioux can serve a number of new  
6 customers on the west side.  
7 A. And we just didn't do the analysis with  
8 that information in hand.  
9 Q. So you don't know one way or the other  
10 whether you can agree or disagree with that then.  
11 A. Right.  
12 Q. And on the east side, if you take out  
13 the fire flow requirement and you just look at, you  
14 know, domestic demands, you don't know whether or not  
15 Sioux has the capacity to serve those particular  
16 customers identified.  
17 A. Right.  
18 Q. But would you agree with me, then, that  
19 some of those customers who have lower demands, as  
20 set forth in your report, Sioux could certainly serve  
21 those folks, couldn't they?  
22 A. We weren't asked to look at users on an  
23 individual basis. We were asked to look at them  
24 collectively. And so until we knew what the impact  
25 of the larger ones would be, you have to be able to

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1 And so, yes, that was one element of what we  
2 analyzed. What really warranted that in our opinion  
3 is that when we dug into the service size of those 13  
4 customers, some of those service lines are greater  
5 than the biggest pipe that Sioux Rural Water has in  
6 that vicinity. And so if service lead is bigger than  
7 the entire transmission system, it created technical  
8 questions on our part on how -- what did that user  
9 really need if they had that big a pipe service lead  
10 going into their building.  
11 Q. If you take fire flow out of your  
12 analysis on the west side, do you agree with me that  
13 with the improvements Sioux has the capacity to  
14 serve?  
15 A. We were never given any information  
16 on -- if you read all the reports, there's nowhere is  
17 it stated what the impacts are going to be of the  
18 improvements.  
19 Q. Did you read Darin Schriever's  
20 deposition?  
21 A. Yes.  
22 Q. Do you recall in his deposition that he  
23 talked about additional customers that could be  
24 served on the west side after the improvements were  
25 made?

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1 serve the branch, not just an individual customer.  
2 Q. Well, let's look at page 9, Table 4.  
3 And let's just go through these. Taking fire flow  
4 out of the equation. Based on the infrastructure  
5 that Sioux has, Sioux could serve Big Shot Fireworks,  
6 couldn't it?  
7 A. We didn't know when we did the report,  
8 and I'm not going to be able to know as we answer the  
9 questions until we were able to assess that in  
10 totality. That customer is less than the assumption  
11 they use in the modeling effort, and so provided all  
12 of the customers also did that, then I think that  
13 particular customer could be served.  
14 Q. Okay. And let's just go to Dakota  
15 Automation. That one's below the usage amount too,  
16 isn't it?  
17 A. 2013 they used 35,000 gallons; right?  
18 Q. You're right. They might have a well  
19 there. I don't know what they've got.  
20 A. I would hope they wouldn't run their  
21 well through the meter in Watertown. That would get  
22 really pricey.  
23 Q. I don't know what they're doing, but  
24 something changed from 35,000 to --  
25 A. Right. And I'm not being

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1 argumentative. It's just that would be a suspect --  
 2 Q. You made your point. You're right  
 3 about that. I missed it. Fed Ex, though, is within  
 4 that range, isn't it?  
 5 A. Similar to my answer for Big Shot  
 6 Fireworks, yes.  
 7 Q. So it looks, as we sit here today, like  
 8 Sioux could serve Fed Ex if you take fire flow out of  
 9 it; true?  
 10 A. And if you had the luxury to look at an  
 11 isolated customer.  
 12 Q. Okay. And same question for Randy  
 13 Hartley.  
 14 A. That one's right on the bubble, but...  
 15 A little bit more than -- I think 5,500 was the  
 16 standard that DGR used.  
 17 Q. But it's within the realm of  
 18 possibility, isn't it?  
 19 A. As an individual customer.  
 20 Q. And Lew's Fireworks is also; correct?  
 21 A. Yes.  
 22 Q. And -- oh, I see what they've done  
 23 here. Okay. So at least for those customers,  
 24 potentially you have to concede that Sioux could  
 25 serve them if you take out fire flow.

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1 Q. You could go one by one.  
 2 A. Within the model I guess you could take  
 3 the model and then you could look to add one user at  
 4 a time incrementally and remodel it. That would be  
 5 technically possible.  
 6 Q. In fact, that's what rural water  
 7 systems do, isn't it, they go one by one to decide  
 8 whether or not they can add a particular customer.  
 9 A. That's not been my experience, Jeff.  
 10 They're going to go into an area where they think  
 11 they need to serve, and they usually go into a  
 12 sign-up campaign and they look at all the users  
 13 they're going to serve and then they try to have the  
 14 ability to put the right pipe in the first time.  
 15 Q. Right. That's when they're doing a  
 16 service expansion. Fair?  
 17 A. Yes.  
 18 Q. But when they have a pipe that's in the  
 19 ground and they're determining whether or not that  
 20 pipe can serve particular customers who want to come  
 21 on, they do a customer by customer analysis, don't  
 22 they?  
 23 A. If they came in over time they would  
 24 take them in the order they were received.  
 25 Q. And if that was done in this case, you

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1 A. So -- we're talking about treatment in  
 2 totality, or are we talking about do they fit within  
 3 the modeling assumptions that DGR used. Because if  
 4 they fit within the modeling that DGR used, the  
 5 analysis looked at treatment, the analysis looked at  
 6 all aspects of those things, those customers do fit  
 7 within the modeling assumptions that DGR used.  
 8 Q. Are you finding fault or do you find  
 9 fault with any of the modeling assumptions that DGR  
 10 used?  
 11 A. We feel that for the east side, given  
 12 these water use dynamics and given those service  
 13 leads, that they should have looked at special class  
 14 customers for these larger users when they did the  
 15 modeling.  
 16 Q. Fair enough. But the ones now we've  
 17 got some information on; true? The ones we've talked  
 18 about you've got some information on.  
 19 A. For better or worse, we would  
 20 have -- we would look at it in totality of serving  
 21 that branch. We didn't -- we weren't thinking of it  
 22 as a discrete customer.  
 23 Q. You didn't do it one by one, you went  
 24 as a whole.  
 25 A. Right.

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1 agree with me that certain of these customers Sioux  
 2 certainly could have served.  
 3 A. They would be consistent with the  
 4 modeling assumptions that DGR used.  
 5 Q. I'm going -- I'm jumping around here  
 6 because I'm just about done believe it or not. I  
 7 don't know what time it is.  
 8 A. I'm good.  
 9 MR. HIEB: It's 3:00. You're doing  
 10 fine.  
 11 Q. In your website you talk about a  
 12 realistic design approach for rural waters. What  
 13 does that mean?  
 14 A. I'm not sure.  
 15 Q. I'll just show you the -- I'm not going  
 16 to mark it as an exhibit. It's your website.  
 17 A. The website is done by the marketing  
 18 department, and I'm not exactly sure what they  
 19 intended by that.  
 20 MR. HIEB: Want me to get your website  
 21 out, Jeff?  
 22 MR. COLE: Let's go off the record here  
 23 a minute.  
 24 (Off the record.)  
 25 MR. HIEB: Back on the record.

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